REMARKS

Claims 1-27 are pending.

Claims 1, 3-27 stand objected to because of informalities.

Claims 1-3, 5, and 17 stand rejected under 35 USC §103(a) as being allegedly unpatentable over <u>Fijoleck et al.</u> (US 6,510,162) in view of <u>Hyziak et al.</u> (US 5,682,460).

Claims 4, 6-16, and 18-27 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Changes in the Claims:

Claims 1, 3-4, 6-27 have been amended to further particularly point out and distinctly claim subject matter regarded as the invention. No new matter has been added.

Claims Objections – claims 1, 3-27

Claims 1, 3-27 have been amended in response to the Office Action's objections. The claims now meet the statutory requirements.

Rejection under 35 USC §103(a) – claims 1-3, 5, and 17

Claims 1-3, 5, and 17 stand rejected under 35 USC §103(a) as being allegedly unpatentable over <u>Fijoleck et al.</u> (US 6,510,162) in view of <u>Hyziak et al.</u> (US 5,682,460). This rejection is respectfully traversed.

Under MPEP §706.02(j), in order to establish a prima facie case of obviousness required for a §103 rejection, three basic criteria must be met: (1) there must be some suggestion or motivation either in the references or knowledge generally available to

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modify the reference or combine reference teachings (MPEP §2143.01), (2) a reasonable expectation of success (MPEP §2143.02), and (3) the prior art must teach or suggest all the claim limitations (MPEP §2143.03). See In re Royka, 490 F. 2d 981, 180 USPQ 580 (CCPA 1974).

Fijoleck discloses a system and method for managing channel usage in a data over cable system. In particular, the method provides a "network administrator the capability of monitoring data channel traffic usage..." See Col. 19, lines 41-42. During initialization, a Quality of Service (QoS) may be requested. See Col. 12, line 46. The QoS includes bandwidth allocated for Cos, and other related parameters. See Col. 12, lines 58-59.

In contrast, the presently claimed invention claims "a traffic monitoring function for monitoring traffic information relating to datagrams." See Claim 1. Fijoleck does **not** teach or suggest monitoring traffic information relating to datagrams but discloses various parameters that stipulate (request) the QoS connection. This is **not** equivalent to the traffic information that expresses the properties of datagrams actually flowing as in the presently claimed invention. See specification at page 12, line 15.

The office action further points to col. 3, lines 35-41, col. 12, lines 5-42, col. 13, lines 1-12, and col. 18, lines 30-49 to refer to "preference value". However, the above cited parts of the Fijoleck do **not** suggest or disclose a "preference value" as presently claimed. Furthermore, Fijoleck does **not** suggest or disclose "inserting said preference value in a header of a datagram". See claim 1.

Fijoleck further discloses "the capability of monitoring data channel traffic usage". See col. 19, lines 38-46. However, this is considered to be used for solving the problem of "the network may become unbalanced when only one or a few data channels are being used by the network devices." See col. 3, lines 37-38. This usage completely differs from the present effect obtained by providing a datagram transfer network that can operate stably by avoiding a state of congestion collapse of the network. See page 4, lines 16-17 of the specification.

Hyziak teaches a set of preferences (325) included in a datagram (FIG. 3). However, the set of preferences (325) includes "sender cost, message security, elapsed transmission time, quality of service, reporting options, handling instructions and spectral efficiency..." See col. 4, lines 39-46. In contrast, the presently claimed invention claims a preference value "**quantifying** the results of evaluation" of a network relating to delivery of user datagrams. Neither Hyziak nor Fijoleck suggest a preference value "**quantifying** the results of evaluation."

Even if Hyziak and Fijoleck were to be combined in the manner proposed, the proposed combination does not suggest or teach all of the claim limitations of claims 1, 2, and 17 for the above reasons. Applicant therefore submits that the rejection based Hyziak and Fijoleck is improper and should be withdrawn.

Thus, Applicant submits that claims 1-27 recite novel subject matter which distinguishes over any possible combination of Hyziak and Fijoleck.

Conclusion

For all of the above reasons, applicants submit that the amended claims are now in proper form, and that the amended claims all define patentable subject matter over the prior art. Therefore, Applicants submit that this application is now in condition for allowance.

Request for allowance

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited. If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Respectfully submitted,
THELEN REID & PRIEST LLP

Dated: September 8, 2003

Thierry K. Lo
Reg. No. 49,097

Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640
(408) 282-1810 Direct
(408) 292-5800 Main
(408) 278-8210 Fax